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MEMORANDUM

NATIONAL SECURITY COUNCIL

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April 7, 1970

MEMORANDUM FOR JOHN EHRLICHMAN

FROM: Robert E. Osgood REO

SUBJECT: U.S. Commercial Interests and a Seabeds Convention

The argument between Defense and Interior on what the U. S. position should be concerning a seabeds convention has been represented as an argument between military security interests and commercial interests. I am convinced -- and so is State, the Marine Commission, and most students of oceans issues -- that this representation distorts the real issues with respect to both our national security interests and our commercial interests. This memorandum presents a brief explanation of the relevance to U.S. commercial interests of the debate between a narrow and a broad boundary of national sovereign rights on the continental margin.

The Law

It is argued that existing international law, based on the Geneva Seabeds Convention of 1958, should be interpreted to give coastal states exclusive sovereign rights over the whole continental margin (the shelf, the slope, and the rise, down to the abyssal ocean bottom). According to this interpretation, any limitation of the boundary of sovereign rights short of the abyssal ocean bottom would be giving away what is ours.

In fact, international lawyers disagree on the interpretation of the Geneva Convention. The weight of legal opinion is by no means in favor of Interior's interpretation. Article I of the 1958 Convention defines the continental shelf on which coastal states have exclusive sovereign rights as an area of the "seabed and subsoil. . . adjacent to the coast. . . to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the national resources. . . ." Some lawyers maintain that this article was a codification of customary law and therefore applied only to the area that was then exploitable. Undoubtedly, the whole margin will eventually be exploitable; but even so, the legal test of its exploitability does not yet exist in the view of many lawyers.

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In any case, the extent of national sovereign rights is pre-eminently a non-legal question. The point of a new seabeds convention is to define more precisely the legal regime for an area in which legal rights have been rendered ambiguous by rapid technological progress in exploitation.

Commercial Access and Profit

Interior argues that a narrow boundary and an adjacent area under international authority would deprive U.S. commercial interests of assured access, with the prospect of reasonable profits, to deep sea oil extraction. There are several reasons for believing that this is not the case.

1. 94% of the world's continental margins are off foreign shores and only 6% off U.S. shores. In the existing areas of foreign sovereign rights U.S. companies are under a growing threat of expropriation, tax discrimination, and other harassments. This threat will be extended in area as well as intensity in the absence of a new seabeds convention or if a new convention gives coastal states sovereign rights over the continental margins off their shores. Communist and unfriendly states would probably deny U.S. companies access to their margins on any terms. An international regime beyond the 200-meter isobath provides the best assurance of U.S. access in the future.

2. The argument that an international authority would discriminate against U.S. companies does not make sense. U.S. deep-sea extraction industries are far ahead of any others in technology. They will dominate extraction for years to come, no matter who does the leasing. An international authority that would distribute royalties from extraction to an international community fund would have a direct interest in inducing U.S. companies to exploit the continental margin.

3. The operations of an international authority will be governed by a treaty in which the U.S. will have a major voice.

Other Commercial Interests

It is understandable that the large oil industries which have had experience in dealing bilaterally with coastal states should prefer to continue this way, even if their calculation of their interests is short-sighted. But it should be recognized that there are other U.S. industries that see their interests lying in a narrow shelf boundary; for example, the distant water fisheries, the deep-sea hard minerals extraction industries, and the Merchant Marine.

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